REMARKS

This is a full and timely response to the outstanding final Office Action mailed May 17, 2007. Through this response, Applicants have amended claims 1, 18, 53, 58, 109, 113, 121, and 125 and have canceled claims 52, 112, and 124 without prejudice, waiver, or disclaimer. Reconsideration and allowance of the application and pending claims 1, 3-20, 23-30, 32-51, 53-58, 60-63, 66-103, and 109-111, 113-123, and 125-128 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 102(e)

A. Statement of the Rejection

Claims 109-128 have been rejected under 35 U.S.C. § 102(e) as allegedly anticipated by *Dougherty et al.*. ("*Dougherty*," U.S. Pat. No. 7028327). Applicants have canceled claims 112 and 124, and have incorporated the subject matter of these claims into independent claims 109 and 121. Applicants respectfully traverse the rejection of claims 109-111, 113-122, and 125-128 for at least the reasons set forth below.

B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the present case, not every feature of the claimed invention is represented in the *Dougherty* reference. Applicants discuss the *Dougherty* reference and Applicants' claims in the following.

Independent Claims 109 and 121

Claims 109 and 121 recite (with emphasis added):

> 109. A hyper-linked data caching system comprising:
> a memory;
> a processor configured with the memory to cache hyper-linked data in a data structure indexed by time of presentation within a corresponding media content instance and retrieve hyper-linked data corresponding to the media content instance; and
> an application client configured to maintain the hyper-linked data in entries in a hyper-linked data structure, **wherein the hyper-linked data entries are valid for a specific time, after which said hyper-linked data associated with an elapsed data entry is replaced with replacement hyper-linked data that also is valid for a specific time**.
>
> 121. A hyper-linked data caching method comprising the steps of:
> receiving hyper-linked data corresponding to a media content instance;
> maintaining the hyper-linked data in a data structure indexed by time of presentation within the corresponding media content instance; and
> **after a specific time, replacing time-elapsed hyper-linked data with hyper-linked data for a not-yet presented media content instance.**

Applicants respectfully submit that *Dougherty* fails to anticipate at least the above-emphasized claim features.

The Office Action (page 4-5) alleges, in connection with dependent claims 112 and 124:

> Dougherty discloses wherein the hyper-linked data entries are valid for a specific time (defined start times and durations; column 19, lines 5-24) after which said hyper-linked data associated with an elapsed data entry is replaced with a replacement hyper-linked data that is also valid for a specific time (storing new time dependent; column 18, line 30-column 19, line 24).

Applicants respectfully disagree. It appears that *Doughery* discloses *arguendo* merely receiving, caching, manipulating, and displaying hyperlinked and web page data, and does not disclose, teach, or suggest the feature of replacing the elapsed hyper-linked data with new hyper-linked data, where the hyper-linked data elapses after a specific time. Thus, for at least this reason, Applicants respectfully request that the rejection of claims 109 and 121 be withdrawn.

Because independent claims 109 and 121 are allowable over *Dougherty*, dependent claims 110-111, 113-120, 122-123, and 125-128 are allowable as a matter of law for at least the reason that the dependent claims 110-111, 113-123 and 125-128 contain all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

II. Claim Rejections - 35 U.S.C. § 103(a)

A. Rejection of Independent Claims 1 and 58

Claims 1-14, 16-20, 58-63, 69-75, and 77-81 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Payton* ("*Payton*," U.S. Pat. No. 5,790,935) in view of *Norwood et al.* ("*Norwood*," U.S. Pat. No. 5,983,316) and *Ueki* (6285632). Claims 1, 4, 15, 23-25, 50-58, 66, 76, 82, and 83 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Dougherty* in view of *Norwood et al.* ("*Norwood*," U.S. Pat. No. 5,983,316) and *Ueki* (6285632). Claims 1, 4, 15, 23-30, 32-36, 38, 48, 49, 58, 67, 68, 76, 82-92, 94, 102, and 103 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Daniels* in view of *Norwood* and *Ueki*. Claims 1, 4, 36, 37, 39-47, 58, 59, 92, 93, and 95-101 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Schein et al. ("Schein,"* U.S. Pat. 6,002,394) in view of *Norwood* and *Ueki.* Applicants respectfully traverse these rejections where not rendered moot by amendment.

B. Discussion of the Rejection

The U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness according to the factual inquiries expressed in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). The four factual inquires, also expressed in MPEP 2100-116, are as follows:

(A) Determining the scope and contents of the prior art;

(B) Ascertaining the differences between the prior art and the claims in issue;

(C) Resolving the level of ordinary skill in the pertinent art; and

(D) Evaluating evidence of secondary considerations.

Applicants respectfully submit that a *prima facie* case of obviousness is not established using the art of record.

Claims 1 and 58 recite (with emphasis added):

1. A dual mode file system in a subscriber network television system, comprising:
a digital home communication terminal (DHCT) comprising:
a memory with logic; and
a processor configured with the logic to determine whether a local file system is coupled to the DHCT, the processor further configured with the logic to, responsive to determining that the local file system is not coupled to the DHCT, use remote data from a virtual file system to support the processor, the processor further configured with the logic to, responsive to determining that the local file system is coupled to the DHCT, use local data stored in the local file system and the remote data from the virtual file system to support the processor;
wherein the local file system comprises a storage device with media, wherein the media is partitioned into a data portion with a data format for storing data and low memory consumption media content and a media content portion for storing media content, the media content portion having a media content format,
wherein the processor is further configured with the logic to receive media content into the data portion unless the received media content consumes a threshold memory capacity that results in the processor receiving the media content with at least the threshold memory capacity into the media content portion;
wherein the processor is further configured with the logic to retrieve hyper-linked data, and an application client is further configured to maintain the hyper-linked data in entries in a hyper-linked data structure, **wherein the hyper-linked data entries are valid for a specific time, after which said hyper-linked data associated with an elapsed data entry is replaced with replacement hyper-linked data that also is valid for a specific time.**

58. A dual mode file method in a subscriber network television system comprising the steps of:
determining whether a local file system is coupled to a digital home communication terminal (DHCT);
responsive to determining that the local file system is not coupled to the DHCT, using remote data from a virtual file system to support a processor in the DHCT;
responsive to determining that the local file system is coupled to the DHCT, using local data stored in the local file system and the remote data from the virtual

file system to support the processor;

partitioning the local file system into a data portion and a media content portion;

receiving media content into the data portion, unless the media content consumes a threshold memory capacity that causes it to be received into the media content portion; and

retrieving hyper-linked data, and maintaining the hyper-linked data in entries in a hyper-linked data structure, **wherein the hyper-linked data entries are valid for a specific time, after which said hyper-linked data associated with an elapsed data entry is replaced with replacement hyper-linked data that also is valid for a specific time**.

Applicants respectfully submit that the rejections to claims 1 and 58 have been rendered moot. Applicants respectfully submit that the art of record fails to disclose, teach, or suggest at least the above-emphasized claim features for reasons similar to those stated above regarding claims 109 and 121.

C. Dependent Claims

Because independent claims 1 and 58 are allowable over *Dougherty* in view of *Norwood* and *Ueki*, dependent claims 3-20, 23-30, 32-48, 49-51, 53-57, 60-63, and 66-103 are allowable as a matter of law for at least the reason that the dependent claims contain all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

III. Official Notice

The Office Action has made the following allegations of Official Notice (location in the Office Action and claim relevance noted in parenthesis):

> (Page 35, pertaining to claims 26 and 84) while Daniels and Norwood disclose a plurality of channels, they fail to specifically disclose at least one digital transmission channel and at least one analog transmission channel.
>
> The examiner takes Official Notice that it was notoriously well known in the art at the time of the invention by applicant for a television to utilize both an analog and digital transmission channel, such as when receiving

> both off-air television and digital satellite, for the typical benefit of providing a viewer with an increased amount of information and content by allowing access to both digital and analog content providers and connections.

Applicants respectfully traverse these allegations of well-known or Official Notice and submit that the subject matter pertaining to these claims should not be considered well-known. As provided in MPEP § 2144.03:

> Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424, F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

As provided in MPEP § 2144.03 (emphasis added):

> If applicant adequately traverses the examiner's assertion of official notice, *the examiner must provide documentary evidence in the next Office action* if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

Neither of the cited references establish that it was well known to receive both analog and digital channels, for at least the reason that such features are incorporated with independent claim features that provide a complexity not anticipated or suggested by the cited art of record. The cited portions merely state that both types of channels "may be provided", or that "some of the channels modulated in the signal may be analog and others digital." This does not rise to the level of "notoriously well known", as is alleged in the Office Action.

Accordingly, Applicants traverse the assertions with regard to well-known use. Because of this traversal, the Office must support its findings with evidence, or withdraw

the well-known determination.

IV. Canceled Claims

As identified above, claims 52, 112, and 124 have been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicants reserve the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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